Citizens' Utility Ratepayer Board

State of Kansas
Mark Parkinson, Governor

David Springe, Consumer Counsel
1500 S.W. Arrowhead Road
Topeka, Kansas 66604-4027
Phone: (785) 271-3200
Fax: (785) 271-3116
http://curb.kansas.gov

Testimony on Behalf of the Citizens' Utility Ratepayer Board
By Steve Rarrick, Staff Attorney
Before the Senate Utility Committee
Re: Senate Bill 384
February 1-2, 2010

Chairman Apple and Members of the Committee:

Thank you for the opportunity to appear before you this afternoon on behalf of the Citizens' Utility Ratepayer Board (CURB) to testify in opposition to Senate Bill 384. My name is Steve Rarrick and I am an attorney with CURB.

CURB opposes Senate Bill 384 because the bill:

- ✓ Price deregulates small rural exchanges without any showing of competition in those exchanges.
- ✓ Eliminates the existing annual price increase cap tied to the consumer price index for residential and small business basic local service.
- ✓ Abandons Kansas and federal universal service goals by eliminating the carrier of last resort obligation, yet still allows universal service subsidies.
- ✓ Places Kansas Lifeline, elderly, and low income customers at risk for any resulting price increases.
- ✓ Eliminates minimal internet access requirements.
- ✓ Eliminates tariff filing requirements.
- ✓ Eliminates published telephone directories.

Janet Buchanan with the Kansas Corporation Commission (KCC) recently provided the Committee with a historical perspective of telecommunications, including the history of price deregulation in Kansas. However, her presentation failed to mention the price deregulation docket filed by AT&T (formerly Southwestern Bell) and fully litigated in 2005. In that docket, extensive evidence and testimony was presented regarding whether sufficient and sustainable competition existed in the State's three largest exchanges (Kansas City, Topeka, and Wichita) to justify price deregulation. For the majority of AT&T's services, the KCC determined that sufficient and sustainable competition was not present, and declined AT&T's request for price deregulation for the majority of its services, including residential and single line business service.

Notwithstanding the KCC's determination, the 2006 legislature price deregulated the Kansas City, Topeka, and Wichita exchanges (exchanges with over 75,000 access lines) with no evidence of increased competition. The 2006 legislation changed the rules for price deregulation in all other exchanges, eliminating the requirement of sufficient and sustainable competition for comparable services. To obtain price deregulation, a local carrier must now merely *demonstrate that two unaffiliated carriers, one which is facilities-based, provide local service to more than one customer in* *the exchange*. Under this much lower threshold, AT&T has price deregulated the majority of its service lines in Kansas. Importantly, the 2006 legislature wisely included an annual price cap for basic residential service and up to four business lines for small business service based on the consumer price index for all rural consumers. The legislature also required exchange-wide pricing to prevent price differences outside the footprint of the local cable telephone provider.

We're not here today because customer preferences are shifting to broadband. We're here today because AT&T is not satisfied with the ease in which it has obtained price deregulation for the vast majority of its total lines in Kansas, and wishes to eliminate the remaining critical consumer protections for residential and small businesses. The critical consumer protections eliminated in this bill are described below:

- <u>The bill price deregulates small rural exchanges without any showing of competition in those exchanges</u>. The bill eliminates all pretence of demonstrating the existence of competition in an exchange to obtain price deregulation.
  - In recent applications for price deregulation, AT&T has failed to demonstrate that *two competitors actually served two customers in the exchange*, and as a result the KCC denied price deregulation in those exchanges. CURB participated in those dockets to ensure consumers were provided the protections contained in the current statutory standard. Understandably, AT&T is unhappy with not achieving price deregulation in those exchanges, and anticipates continued difficulty demonstrating that *two carriers serve just two customers* in its remaining regulated rural exchanges.
  - Under this bill, AT&T seeks to avoid any required showing of competition in its remaining rural exchanges to achieve price deregulation. This bill requires no competitive presence to achieve price deregulation in those small rural exchanges, but would deregulate AT&T statewide merely because it has achieved price deregulation for the majority of its lines *in other (larger) exchanges.* Customers in the numerous small rural Kansas exchanges shown in blue on the map provided by KCC Staff will find no comfort in learning their exchanges were deregulated under this bill simply because there were competitive options in larger exchanges.
  - Moreover, the bill doesn't distinguish between residential and business lines. Traditionally and under current law, a local carrier must show competition for residential service to price deregulate residential service, and competition for business service to price deregulate business service. This bill doesn't distinguish between business and residential service, but simply deregulates all services simply because the carrier has achieved price deregulation for the majority of its lines in the State.
- <u>The bill eliminates the existing annual price increase cap tied to the consumer price index for residential and small business basic local service</u>. The bill eliminates the remaining price protection for basic local service in deregulated exchanges under current law.
  - Basic residential service and up to four business lines will no longer be protected by the current annual price increase cap that is tied to the consumer price index for all rural consumers,[1] which has limited the increases AT&T could make.
  - Without this annual cap tied to the consumer price index, price increases will be made. In California, AT&T raised basic residential service prices 22% this year and 23% last year, and that's under current regulatory limits. In 2011, AT&T will have no limits on basic residential

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[1] K.S.A. 66-2005a(q)(1)(F). CURB sought and supported this cap in deregulated exchanges on annual price increases to basic residential service and up to four business lines – tied to the consumer price index for all rural consumers.

service in California. Since California deregulated vertical services in 2006, significant price increase for vertical services have occurred, including price increases of 345% for an unlisted number, 226% for directory assistance, and 85% for call waiting.
  - If the Committee goes forward with this bill, CURB urges you to amend the bill to include the existing annual price increase cap for basic residential and up to four business lines tied to the consumer price index for all rural consumers. That protection has prevented AT&T from significantly raising those rates over the past several years. If you pass this bill without providing an annual price increase cap, there will be no price protection to Kansas residential and small business customers for basic phone service.
- The bill abandons Kansas and federal universal service goals by eliminating the carrier of last resort obligation, yet still allows universal service subsidies.
  - The bill will allow the electing carrier to simply offer new or existing customers wireless or VoIP service with the service quality and reliability problems associated with those technologies.
  - The bill eliminates the obligation to run wireline service to new homes or developments.
  - The bill does not prohibit AT&T from discontinuing traditional wireline service to existing consumers and offering VoIP or wireless as an alternative.
  - While retaining KCC service quality standards, the KCC will have no ability to resume price regulation if the electing carrier fails to meet them.
  - There is no requirement that the voice service provided by the electing carrier is functionally comparable to wireline circuit switched service. Examples of concerns in this area include:
    - Unlimited local calling. While the monthly charge for the alternative technology voice service may be the same as AT&T's wireline service, the usage charges for calling beyond a designated monthly usage allotment will result in unaffordable rates for some consumers.
    - Actual voice quality problems associated with wireless service. Wireline phone service remains clearer and rarely disconnects.
    - Reliability concerns during times of power outages.
    - Access to 911 services. While 911 services have improved for wireless and VoIP, neither are as reliable as wireline 911 services.
  - If the market is truly competitive and an electing carrier will no longer have carrier of last resort obligations to provide traditional landline voice service, then why should that carrier continue to receive any further universal service support? The carrier of last resort responsibility imposed by State law on incumbent carriers is a key justification for continuing universal service support. If AT&T no longer has the carrier of last resort obligation to provide traditional wireline voice service, then AT&T should no longer receive federal and State universal service support.
- The bill places Lifeline, low income, and elderly customers at risk for any resulting price increases. While the bill may still require AT&T to continue to provide Lifeline service, Lifeline customers will be negatively impacted by this legislation because a recent KCC decision changed the way Lifeline is provided. The current Lifeline discount no longer insulates low income customers from price increases,[2] so price increases resulting from this bill will directly impact Lifeline customers, as well as other elderly and low income customers.
- The bill contains an illusory and ineffective price cap for rural exchanges. The provision at page 14, lines 32-39, providing that until July 1, 2015, *standalone* residential service in rural exchanges may not be priced higher than urban exchanges, is meaningless since without the current annual cap tied

[2] In KCC Docket No. 07-GIMT-1353-GIT, the KCC abandoned the "hold harmless" basis for Lifeline support which insulated lifeline customers from rate increases. Under the current "equal credit" approach, Lifeline customers receive the same Lifeline credit (currently $7.77), which leaves them at risk to local rate increases.

to the consumer price index, AT&T will be able to raise the price in urban exchanges (and therefore rural exchanges as well). In addition, this provision raises several additional concerns:

  - First, why don't exchanges with between 2,500 and 75,000 lines receive the same urban price ceiling? Are the consumers in Dodge City, Garden City, Hutchinson, Junction City, Lawrence, Manhattan, McPherson, Salina, and other mid-size exchanges less deserving of the urban exchange price ceiling than rural AT&T exchanges?
  - In addition, why is there no similar price ceiling for small businesses with up to four business lines? Are Kansas small businesses no longer deserving of the price protection provided in current law?[3]
  - Finally, why does this bill use the term "standalone" residential service? By using the term "standalone," this limited price ceiling could be interpreted to apply only to residential service subscribed without any ala cart vertical services. This is inconsistent with other provisions of current law that provides a price increase cap for the "initial" residential local exchange access line and up to four business local exchange access lines, even if subscribed with vertical services such as caller ID.

- <u>The bill eliminates minimal internet access requirements</u>. The bill will eliminate current law requiring local exchange carriers to meet minimal statutory standards for providing internet access under K.S.A. 66-2011.
- <u>The bill eliminates tariff filing requirements</u>. The bill eliminates existing requirements to file tariffs or to file individual case basis contracts with the Commission. Instead, an electing carrier is only required to post service terms on public websites or at company locations accessible to the public. Consumers without internet access will find it difficult to access the terms of their contracts with AT&T if this provision is passed.
- <u>The bill eliminates published telephone directories</u>. The bill eliminates the requirement for electing carriers to issue telephone directories. Consumers, especially those who still don't have access to the internet, continue to rely upon published telephone directories.

While the KCC may not be testifying for or against this bill, it should be noted that the KCC had extensive discussions with AT&T regarding its proposal. However, the KCC refused to publicly disclose documents in its possession that reflected its discussions with AT&T, including draft testimony provided by AT&T to the KCC, communications to and from AT&T, and Staff recommendations to Commissioners regarding AT&T's deregulation proposal. It is disturbing that the KCC believes it is appropriate to meet and communicate in secret with a regulated utility about deregulation legislation the regulated utility is proposing.

On behalf of CURB, I urge you to vote against passage of Senate Bill 384. However, should the Committee decide to proceed with the bill, CURB urges you to retain the annual cap on price increases for basic residential and up to four business lines tied to the consumer price index for all rural consumers. In addition, CURB urges you to amend the bill to require as a condition of deregulation under this bill, that any electing carrier voluntarily decline to receive any further federal and State universal subsidies.

[3] K.S.A. 66-2005a(q)(1)(F). *See*, Senate Bill 384, p. 8, lines 30-41.